IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No. 38690 of 2002
and W.P.Nos. 38721 to 38727, 38728, 38729, 38731, 387
32, 38733, 38734, 38735, and 38736 of 2002, 38691 to 38700, 38712, 3
8713, 38714, 38715, 38716, 38717, 38718, 38719 and 38720 of 2002, 459
73 to 45975, 45986 of 2002 and 7742 to 7746 of 2003, 46279 to 46282
of 2002, 45962 to 45966 of 2002, 45968 and 45985 of 2002, 7741, 77
47 to 7749 of 2003, 45969 to 45972 of 2002, 45976 to 45984 of 2002
and
WPMP.Nos: 57762, 57764, 57766, 57768, 57770, 57772, 57774, 57776, 577
789, 57780, 57782 of 2002, WVMP.95 of 2003 WPMP.NOs.57816, 57818, 578
20, 57822, 57824, 57826 of 2002 WVMP.59, 60, 70 to 76 of 2003,
WPMP. Nos:57834, 57836, 57838, 57840, 57842, 57844, 57846, 57848, 57850
of 2002 WVMP.61 to 69 of 2003, WPMP.Nos:57802, 57804, 57806, 57808, 57810
, 57812, 57814 of 2002 WVMP.NOs:52 to 60 of 2003, WPMP.Nos:67360,
67362, 67364, 67366, 66975, 66977, 66979, 66981, 66983, 66985, 66987,
66989, 66991, 66993, 6995, 66997, 67001, 67003, 67005, 67005, 67009,
67011, 67013, 67015, 67017, 67019, 67021, 67023 of 2002, WPMP.Nos:9937,
9938, 9939, 9940, 9941, 9942, 9943, 9944, 9945, 9946, 9947, 9948,
9949, 9950, 9951, 9952, 9953, 9954 of 2003.

W.P.No:38690 of 2002

Ayyavu ..Petitioner

-Vs-

1. State of Tamil Nadu, rep. by
The Secretary to Govt.,
Housing and Development Department,
Secretariat, Chennai-9

2. The Special Tahsildar
(Land Acquisition)
Unit IV, TNHB Schemes,
Nandanam, Chennai-35 ..Respondents

For petitioners :: Mr.M.M.Sundaresh
in all Wps

For respondents :: Mr.Gomathinayagam, Spl.G.P. (L.A)
in all WPs

Petitions filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorari as stated therein.

:COMMON ORDER

In Writ Petition Nos:38690, 38721 to 38727, 38728, 38729, 38731, 38732, 38733, 38734, 38735, and 38736 of 2002, the petitioners challenge G.O.Ms.No:448, Housing and Urban Development Department, dated 21.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:489, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

2. In Writ Petition Nos: 38691 to 38700, 38712, 38713, 38714, 38715, 38716, 38717, 38718, 38719 and 38720 of 2002, the petitioners challenge G.O.Ms.No:446, Housing and Urban Development Department, dated 21 .10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:493, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

3. In Writ Petition Nos:45973 to 45975, 45986 of 2002 and 7742 to 7 746 of 2003, the petitioners challenge G.O.Ms.No:305, Housing and Urban Development Department, dated 25.7.2000 in issuing Section 4(1) Notification and G.O.Ms.No:401, Housing and Urban Development Department dated 28.9.2001 in issuing the Declaration under Section 6 of The Land Acquisition Act.

4. In Writ Petition Nos: 46279 to 46282 of 2002, the petitioners challenge G.O.Ms.No:493, Housing and Urban Development Department, dated 27.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:491 , Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

5. In Writ Petition No: 45962 to 45966 of 2002, the petitioners challenge G.O.Ms.No:449, Housing and Urban Development Department, dated 21.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:495, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

6. In Writ Petition No. 45968 and 45985 of 2002, the petitioners challenge G.O.Ms.No:457, Housing and Urban Development Department, dated 26.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:490, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

7. In Writ Petition Nos: 7741, 7747 to 7749 of 2003, the petitioners challenge G.O.Ms.No:456, Housing and Urban Development Department, dated 26.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:492, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

8. In Writ Petition Nos:45969 to 45972 of 2002, the petitioners challenge G.O.Ms.No:463, Housing and Urban Development Department, dated 27.10.1999 in issuing Section 4(1) Notification and G.O.Ms.No:491, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

9. In Writ Petition Nos:45976 to 45984 of 2002, the petitioners challenge G.O.Ms.No:375, Housing and Urban Development Department, dated 31.8.1999 in issuing Section 4(1) Notification and G.O.Ms.No:403, Housing and Urban Development Department dated 6.12.2000 in issuing the Declaration under Section 6 of The Land Acquisition Act.

10. In all the above writ petitions, the lands were sought to be acquired for the purpose of development of Satellite Town by the Tamil Nadu Housing Board in Narasingapuram and Parvatharajapuram Villages in Poonamallee Taluk. The purpose is common, namely, development of Satellite Town by the Housing Board. The Tamil Nadu Housing Board submitted requisition for acquisition of private patta lands measuring 34.22.0 Hectares in Narasingapuram Village, Poonamalee Talk in around the area Namele, in Narasingapuram Village, but also the lands situate in Vellavedu, Sembarambakkam, Parvatharajapuram and Kuthambakkam villages including the dry lands and poramboke lands for the implementation of Satellite Town scheme. On the said proposal Land Acquisition proceedings were initiated. As seen from the counter affidavit, after considering the objections, the Declaration under section 6 of the Land Acquisition Act was published. It is contended by the respondents that the acquisition is for a public purpose, and it is not arbitrary, not illegal and not unjust. It is also contended by the respondent that there cannot be any legal impediment for acquiring wet lands or agricultural lands where crops are being raised, for the purpose of

development of satellite towns. There is no dispute about the extent of lands notified under section 4(1) Notification or Section 6 Declaration issued in that behalf.

11. Mr.S.S.Sundaresh, learned counsel appearing for the petitioners in all the writ petitions raised the following two points:-
(i) The publication of Section 4(1) Notification and Section 6 Declaration were made in Newspapers which have no circulation in the locality and which are insignificant and therefore the acquisition is liable to be quashed.
(ii) There is no consideration of the objections by the Land Acquisition Officer and there being a total failure of application of mind to the objections raised before the Land Acquisition Officer, the acquisition proceedings are vitiated and liable to be quashed.

12. Per contra, it is contended by Mr.Gomathinayagam, learned Special Government Pleader that Section 4(1) Notifications as well as Section 6 Declarations were published in the registered Newspapers like Malai Murasu or Malai Malar or Madurai Mani or Makkal Seithi or Dinaboomi or Dinakaran or Arasiyal Tharasu and they being registered newspapers having circulation in the locality, it is contended that the publication is in conformity with the

statutory provision of Section 4 and Section 6 of the Act. Apart from publication, substance of the publication has been affixed in the locality as well as in the Gazette.

13. As regards the second point, the learned counsel contended that the Land Acquisition Officer has forwarded the objections to the Government and it is the Government which makes the ultimate decision to proceed further with the acquisition at the stage of issuing Section 6 Declaration and therefore the acquisition is not vitiated.

14. In view of the two limited contentions advanced, it may not be necessary to set out the details of the lands or the details of the dates on which the respective Notifications or Declarations were being issued or published or affixed or effected, nor, it is necessary to set out the extent of the lands acquired or other details relating to the lands notified and declared.

15. The two points that arise for consideration in this batch of Writ Petitions are:-
(i) Whether the acquisition is liable to be quashed for failure to publish the Notifications and Declarations in the Dailies which are having no circulation in the locality and in insignificant dailies?
(ii) Whether there is total non application of mind on the part of the Land Acquisition Officer and non consideration of the objections raised by the land owners? and whether this vitiates the acquisition proceedings?
16. On the first point, this court finds that Section 4(1) Notification as well as Section 6 Declaration have been published in the registered Newspapers having circulation in the locality. There is no specific averment in the affidavit filed in support of the petition suggesting that the registered newspapers in which section 4(1) Notification and Section 6 Declaration have been published have no circulation in the locality. The lands are located in Poonamallee Taluk which is just outside the city of Madras. All the Newspapers are registered newspapers in the City of Madras and having circulation in the locality as set out in the counter affidavit. It has been specifically stated in the counter affidavit and the files also would disclose that Section 4(1) Notifications and Section 6 Declarations were published in the two registered Tamil Dailies having circulation in the locality. As already pointed out, no specific averment has been made to the effect that the newspapers have no circulation at all in the locality or that the newspapers have no circulation at all in the locality or that the newspapers is not a registered newspaper or that the newspapers have circulation only in other part of the State of Tamil Nadu. Materials would show that the newspapers are registered newspapers and they have circulation in and around the City of Madras including the locality in question and therefore the first contention advanced by the petitioners cannot be sustained. This court had occasion to consider the identical contention in W.P.No.6484 of 1995 (Dalmiah Cements (Bharat) Ltd., Vs. State of Tamil Nadu and 2 others) etc., batch etc., batch in detail and following the same, this contention has to fail.

17. It is also sought to be contended that the newspapers are

insignificant newspapers. On a perusal of the file, it is seen that the newspapers are not insignificant newspapers and it cannot also be held that the newspapers have no circulation in the locality. In the affidavit filed support of in most of the cases, no such contention has been set out, except stating that the ag ricultural lands shall not be acquired and there is a delay between Section 4(1) Notification and Section 6 Declaration or there is a wide gap or that a report of Dr.M.S.Swaminathan, Research Scholar is being relied upon to show that agricultural lands shall not be acquired. No specific averment has been made in the affidavit filed in support in most of the writ petitions that the newspapers in which Section 4(1) Notifications or Section 6 Declarations were published have no circulation in the locality or that they re insignificant newspapers. In the circumstances, this court holds that the first contention advanced cannot be sustained. The reliance placed on the pronouncement of a Division Bench of this Court in Krishnan Vs. Government Of Tamil Nadu, reported in 2001 (4) CTC 108 has no application to the facts of the case and it is clearly distinguishable. That apart, no such contention has been advanced, nor such an averment has been set out in the affidavit to call upon the respondents to controvert the contention which is sought to be made out at the time of hearing. Further, it is seen that in the present case all the land owners or the petitioners in this batch of writ petitions have submitted their objections well within time, they were received, they have been afforded opportunity during Section 5A enquiry and thereafter only Section 6 Declarations were issued. Therefore in any view of the matter, the first contention advance cannot be sustained and it fails.

18. Nextly, it is contended by Mr.M.M.Sundaresh, learned counsel for the petitioners in this batch of writ petitions that the acquisition is liable to be quashed in view of the objections raised by the petitioners have been rejected mechanically without application of mind and 5.A Proceedings would disclose that neither the Land Acquisition Officer had adverted to the objections, nor considered the objections or remarks, but without consideration has forwarded his report mechanically and this vitiates the acquisition. In this respect, the learned counsel for the petitioners relied upon a pronouncement of this court in Thiruvengadam Vs. Secretary to Government, Housing Department, Government of Tamil Nadu and 9 others, reported in 197 (II) CTC 323 as well as a Division Bench Judgment of this court in Tamil Nadu Real Estates Ltd. Vs. Special Tahsildar, (Land Acquisition) and others, reported in 2002 (1) L.W. Page 37 (D.B) which has been confirmed by their Lordships of the Supreme Court in Special Leave to Appeal (Civil) No.19168 of 2001 dated 13.9.2002.

19. Mr.M.M.Sundaresh, learned counsel referred to the objections raised as well as the remarks received and the 5A. Enquiry conducted by the Land Acquisition Officer. In this batch of writ petitions, there is no controversy that the 5.A. Enquiry report is identical in all the writ petitions. It is useful to extract the very report of the Land Acquisition Officer as much reliance is placed on the report submitted by the Land Acquisition Officer.

"3) The enquiry under Section 5-A of the Land Acquisition Act was conducted on 9.3.2000, 16.6.2000 and 25.7.2000 after serving necessary notices

prescribed under the rules on the Land Owners and other interested persons in the land. During the 5.A. Enquiry, Objection Petitions were filed by the Land Owners and other interested persons in the land. The gist of the objections raised at the time of 5.A enquiry along with objection petitions in original was sent to the requisition body (i.e) Tamil Nadu Housing Board, Chennai-35, for their opinion and remarks in this office letters third cited. The Tamil Nadu Housing Board in their letters fourth cited informed to over rule all the objections raised during 5.A enquiry as all the lands notified for acquisition are essentially required for housing schemes absolutely comprehensive scheme and to proceed further with land acquisition proceedings.
4) The opinion of the Tamil Nadu Housing Board was communicated to the objectors in this office Rc.6895/99/E1, dated 16.10.2000 and further enquiry to her any further objections on the opinion of the Tamil Nadu Housing Board, as provided under Rule 3(b) of the Land Acquisition Act was conducted on 1.11.2000.
5) During the enquriy under rule 3(b) some land owners filed their objections on the remarks of the Tamil Nadu Housing Board. The objections received at the time of 3(b) enquriy and the substance of the objections expressed during 5(A) enquiry are same.
6) Therefore, I recommend to over rule all the objections and to decide to submit Draft Declaration under Section 6 of the Land Acquisition Act in respect of the notified lands to Government for approval and publication in the Tamil Nadu Government Gazette."

19. Identical is the report submitted by the Land Acquisition Officer recommending to overrule the objections in all the Writ Petitions.

20. A perusal of the above extracted portion of the report in particular paragraphs 4 and 5 would show that the objections has neither been considered, nor remarks of the requisitioning body has been accepted to overrule the objections. But on the other hand, what has been extracted above would show that there was an enquiry to hear objections and an enquiry under Rule 3(b) was conducted and during the enquiry the same objections were raised. Therefore, according to the learned counsel there is no application of mind on the part of the Land Acquisition Officer with respect to the objections raised in detail as well as the remarks submitted by the requisitioning body and totally there is no application of mind. In this respect, much reliance is placed upon the Division Bench judgment of this court as affirmed by the Supreme Court in the Special Leave Appeal, cited supra. In Thiruvengadam Vs. Secretary to Government, Houding Department, Govt., of Tamil Nadu reported in 1997 (II) CTC 323, sitting Single, this court had occasion to consider an identical contention and while following the pronouncement of earlier Division Bench judgment of this court in Ramanujam Vs. Collector of Madras (1994 WLR 3 26) this court held that it is essential on the part of the Land Acquisition Officer to apply his mind to the objections raised and if there is no application of mind at all by the Land Acquisition Officer while forwarding his report, the acquisition stands vitiated.

21. In Tamil Nadu Real Estates Ltd., Vs. Special Tahsildar (L.A), reported in 2002 (1) L.W.37 (D.B), a Division Bench of this Court (to which I

am a party) while referring to the earlier pronouncement of the Supreme Court in Shyam Nandan Prasad & others V. State of Bihar & others, reported in 1993 (4) SCC 255, held thus:-

"48. It is obligatory for the land acquisition officer to make a report or recommendation and forward the same to the appropriate Government. It is for the Government to accept the report or otherwise consider the entire matter and thereafter either make a declaration or decline to make a declaration after examining the report and the papers forwarded therewith by the land acquisition officer. Hence, it is obligatory on the part of the land acquisition officer to consider the objection as well as the remarks of the requisitioning body and make his independent assessment and submit his report to the State Government containing his recommendations on the objections. While making such recommendations, the land acquisition officer has to assess the materials placed before him by the land owner as well as the requisitioning authority, and if the land acquisition officer without his independent assessment or failed to consider but abdicate himself to the remarks submitted by the requisitioning authority and forwards the report to the Government, it is not a report in the eye of law and, consequently, Section 5A proceedings stands vitiated.
Xx xx xx xx xx
50. On a reading of the report it is clear that the land acquisition officer without independently assessing the merits of the objections and the remarks forwarded by the requisitioning authority had merely reported that the Chairman, Tamil Nadu Housing Board over ruled the objections of the land owners and had instructed the land acquisition officer to send the Draft Declaration to the Government for approval. It is rightly pointed out that the land acquisition officer had merely abdicated his functions enjoined upon him under sub-section (2) of Section 5A and had submitted himself to the dictation of the requisitioning body, namely, The Chairman, Tamil Nadu Housing Board. The report in no way discloses the assessment of the objections vis-a-vis the remarks of the requisitioning body by the Land Acquisition Officer and, thereafter forwarding his recommendations on the objections together with the record of the proceedings, which alone would be in conformity with sub-section (2) of Section 5A. In this case, the land acquisition officer's recommendation or report is not a report at all on the objections submitted by the land owners, but it is an abdication of his reporting or recommendation to the dictation of the requisitioning body, namely, the Chairman, Tamil Nadu Housing Board.

51. When the statutory provisions, namely, sub-section (2) of Section 5A requires the land acquisition officer to consider the objection and submit his recommendation on the objections, the land acquisition officer is expected to assess the objections independently and objectively with reference to the remarks received from the requisitioning body, which alone would satisfy sub-section (2) of Section 5A. Any deviation would vitiate the report and it is not a report in the eye of law. The decision of the Government under Section 5A (2) is final and normally this Court would not interfere with the recommendations of the land acquisition officer, if in the recommendations the objections are fully considered by the land acquisition officer and after giving reasonable opportunity to the objectors and, thereafter, the

recommendations were made. A perusal of Section 5A enquiry report would show that in objections 1 and 2, the enquiry officer had merely set out the name of the owner and in respect of his survey number or sub-division and their gist of objections. Only in the last portion, which is extracted above, is his report if at all.

52. When the objections were not duly considered by the land acquisition officer objectively or that the objections were disregarded and that the land acquisition officer abdicated his recommendations to the dictation of the requisitioning body, which recommendations not being in conformity with Section 5A(2), is no report at all as there is no objective assessment with respect to the objections vis-a-vis the remarks of the requisitioning body, who has proposed the acquisition, then in the eye of law there being no recommendation and objections not having been referred to or adverted to or considered by the land acquisition officer in the manner prescribed by Sub-section (2) of Section 5 A. Hence we hold that the report of the enquiry officer stands vitiated.

53. As there is a patent failure to consider the objections put forward by the land owners, as there is no independent assessment of the objections vis-a-vis the remarks submitted by the requisitioning body and as the land acquisition officer had submitted to the dictation of the requisitioning body without reference to the objections, in law the action of the land acquisition officer in forwarding his report recommending the acquisition is not in conformity with Section 5A (2) and there is no valid report in the eye of law. Therefore, there cannot be a valid declaration and the declaration issued under Section 6 in this respect is liable to be quashed."

22. The above Division Bench Judgment of this Court has been affirmed by the Supreme Court in Special Leave Appeal (Civil) No.19168 of 2001 (Special Tahsildar Vs. Tamil Nadu Real Estates Ltd.,) dated 13.9.2002. Their Lordships of the Supreme Court while confirming the said judgment of the Division Bench of this Court held thus:-
"It appears from the record that the High Court has quashed Section 6 Notification on the ground of violation of the principle of natural justice. The High Court has also quashed Section 4(1) Notification for the following reasons:-
"Further, in this case, declaration under Section 6 has been made on

the last date. Hence, practically, there could be no fresh declaration even if the matter is remitted back to the respondents for an enquiry and as a consequence Section 4(1) Notification also will not survive".

The observation with respect to Section 4(1) Notification is unexceptionable in view of the law laid down in the recent decision of the Constitution Bench; we do not see any reason or justification for interference under Article 136 of the Constitution of India. As such, this Special Leave Petition is dismissed.".

23. In the light of the pronouncement of the Division Bench of this Court as affirmed by the Supreme Court, the second contention advanced by the

counsel for the petitioners on the face of report submitted by the Land Acquisition Officer deserves to be sustained and more so when the Land Acquisition Officer has neither applied his mind, nor referred to the objections, nor considered the objections or the remarks nor made his independent assessment submitting his report to the State Government containing his recommendations. The Division Bench judgment of this court is directly on the point and binding on this court.

24. In the circumstances, the second contention advanced deserves to be sustained. There is no quarrel that the reports of the Land Acquisition Officer in this batch of Writ Petitions are identical in all respects with respect to the objections submitted and therefore on the second contention, the acquisition is liable to be quashed. In this case, Section 4(1) Notifications were made on 21.10.1999 or 27.10.1999 or 26.10.1999 or 31.8.199 and therefore in these cases more than three years have elapsed from the date of 4(1) Notification and therefore, this court will not be justified in remanding the matter for fresh enquiry under section 5.A also.

25. In the circumstances, this batch of writ petitions are allowed, acquisition proceedings are quashed. It is well open to the respondents to proceed afresh if they so decide. Consequently, all the connected WPMPs and WVMPs are closed. No cost.

Internet:Yes
Index:Yes

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Copy to:-

1. The Secretary to Govt.,
Govt., of Tamil Nadu,
Housing and Development Department,
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2. The Special Tahsildar
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